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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,152	10/27/2000	Chisa Hayakawa	01165.0799	1720
22832	7590	01/15/2004		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			EXAMINER PIERCE, JEREMY R	
			ART UNIT 1771	PAPER NUMBER

DATE MAILED: 01/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/674,152	Applicant(s) HAYAKAWA ET AL.
	Examiner Jeremy R. Pierce	Art Unit 1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 14 July 2003.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 3 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 3 and 7-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_ .
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 14, 2003 has been entered.

### ***Response to Amendment***

2. Applicant's amendment filed on July 14, 2003 has been entered. Claim 3 has been amended. Claims 3 and 7-10 are currently pending. The Declaration provided by Applicant is sufficient to withdraw JP 9-273,085 as prior art under 35 USC 102(a) as set forth in sections 3 and 5 of the last Office Action.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moretz et al. (U.S. Patent No. 5,269,720) in view of Mouri et al. (U.S. Patent No. 5,690,922).

Moretz et al. disclose a knitted composite fabric comprising a moisture transport fabric layer and a moisture dispersal fabric layer used in a brassiere (Abstract). Moretz et al. do not disclose adding a white pigment. However, white pigment, such as titanium oxide, is commonly added to fabric material. Mouri et al. disclose adding titanium oxide to fiber in an amount of 0.1 to 25% by weight in order to create a deodorizing effect (Abstract). Mouri et al. teach that such fibers find particular use in underclothing (column 15, line 58). It would have been obvious to one having ordinary skill in the art to add titanium oxide to the liquid transporting and dispersing fibers of the undergarment of Moretz et al. in order to enable the fibers to have a deodorizing effect, as taught by Mouri et al. With regard to claim 8, Moretz et al. disclose adding stretch yarns into the fabric (column 3, line 52). With regard to claim 9, although Moretz et al. do not explicitly teach the claimed property limitations, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. water diffusible fibers) and in the similar production steps (i.e. formed into a composite fabric) used to produce the brassiere. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the apparent density, water-retention ratio, and diffusion area are all result effective variables that affect the ability of the fabric to hold and disperse liquid. It would have been obvious to one having ordinary skill in the art to optimize the composite fabric of Moretz et al. in

order to obtain the desired density and water retention ratio of the fibers, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moretz et al. in view of Mouri et al. as applied to claim 3 above, and further in view of Unitika (JP 62-53438 with English Abstract Provided).

Moretz et al. do not provide W-shaped cross section fibers in the wicking layer, but do desire the fibers in that layer to have a high surface area in relation to volume (column 3, lines 19-20). The '438 Patent teaches W-shaped cross-section fibers, known for their high surface area, are used in composite fabrics to provide water absorbing and transporting functions (Abstract). It would have been obvious to one having ordinary skill in the art to use W-shaped cross-section fibers in the wicking layer of Moretz et al., in order to provide a means to obtain the desired high surface area in relation to volume desired by Moretz et al.

#### ***Response to Arguments***

6. Applicant's arguments filed July 14, 2003 have been fully considered but they are not persuasive.
7. Applicant argues that the Moretz reference does not teach the conceptual idea of the present invention of preventing temporal color depth change of a dyed fabric used to make an outer garment when the garment becomes wet. However, Applicant's claims were not rejected because of any assertion that Moretz intends to accomplish the same

goal as Applicant in the present invention. The combination of Moretz and Mouri meet the limitations of Applicant's claims.

8. Applicant argues that there is no reason for the moisture transport layer of Moretz to contain white-pigment containing fiber. However, the motivation for providing titanium oxide in the Moretz fabric set forth in the rejection above is to improve the deodorizing properties, which is taught by Mouri. The references do not need to have the exact same objective as Applicant's invention. The references, in combination, need only meet the limitations set forth in the claims. Applicant is claiming a white pigment in a fabric layer. As set forth above, supplying the fabric of Moretz with titanium oxide (a white pigment) would be obvious in order to achieve improved deodorizing properties.

9. Applicant argues that the suggestion to combine Moretz in view of Mouri comes from reading Applicants' specification and not from anything taught by either Moretz or Mouri. This is incorrect because the motivation is to improve deodorizing properties of an undergarment fabric. This is not found in Applicants' specification. But such motivation is found in Mouri, as set forth above in the rejection. The Examiner agrees with Applicants' assertion that the white pigment of the present invention is used for an entirely different purpose than in Mouri. However, the motivation for combining references in a 103 rejection does not need to be the same as Applicants' motivation for doing something.

10. Applicant argues that there is no suggestion in either of the cited references to include white pigment in the moisture dispersal fabric layer of Moretz. However,

motivation for including titanium oxide in all the fabric layers of Moretz is set forth above as improving deodorizing properties.

11. Applicant argues that the parameters X and Y specified in claim 9 are specifically selected to provide the composite fabric with improved anti-temporal color change performance. However, the Examiner maintains that the materials used in Moretz and the method of making the fabric of Moretz are substantially similar to the claimed materials of Applicants' invention, so an assertion that the properties are inherent to the material of Moretz is reasonable, unless proven otherwise by Applicant. Even if not, modification of such properties is obvious as set forth above in the rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0994.

JRP  
JRP

*Elizabeth M. Cole*  
ELIZABETH M. COLE  
PRIMARY EXAMINER